

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re

**CIRCUIT CITY STORES, INC., et al.,

Debtors.**

Chapter 11

Case No. 08-35653 (KRH)

Jointly Administered

**RESPONSE OF GENERATION H ONE AND TWO LIMITED PARTNERSHIP TO
LIQUIDATING TRUST'S FORTIETH OMNIBUS OBJECTION TO LANDLORD
CLAIMS (REDUCTION OF CERTAIN INVALID CLAIMS-MITIGATION)
(Claim No. 12537)**

Generation H One and Two Limited Partnership ("Generation"), by counsel, hereby files its response (the "Response") to the Liquidating Trust's Fortieth Objection to Landlord Claims (the "Objection"). In the Objection, the Liquidating Trust asserts that Generation's Claim No. 12537 (the "Claim") filed in the amount of \$858,981.93 should be reduced and allowed in the sum of \$108,265. Generation opposes the relief sought by the Liquidating Trust in the Objection and asks that the Claim be allowed in the full amount in which it was filed. In support of its Response, Generation states the following:

1. The Liquidating Trust's Objection asserts that the Claim should be reduced subject to modification upon timely receipt of mitigation information.
2. The Claim should not be reduced as Generation was unable to mitigate the damages sought in its Claim.

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Counsel for Generation H One and Two Limited
Partnership

3. Circuit City rejected the space it rented from Generation effective March 10, 2009, pursuant to Bankruptcy Code Section 365(d)(2) and procedures approved by this Court (the “Rejection”).

4. Generation was not able to find a new tenant to rent the whole location that Circuit City had occupied (4414 South College Avenue, Fort Collins, Colorado, also known as store number 3376 (the “Location”)).

5. Since the date of the Rejection, Generation employed two different brokers to attempt to relet the space (Remax Agency, Fort Collins, Colorado and Sullivan Hayes Agency, Denver, Colorado). Generation was able to relet only portions of the Location starting in September of 2010.

6. When Circuit City leased the Location from Generation, the monthly rent obligation was \$41,881.00. Starting in September of 2010 the first partial-replacement tenant for the Location (“Harbor Freight”) signed a lease for 53% of the Circuit City space. Harbor Freight’s monthly rental obligation to Generation is \$18,468 or 44% of the monthly obligations previously paid by Circuit City each month. Harbor Freight commenced paying rent for the space in April of 2011.

7. In February of 2011, a second tenant (“Boot Barn”) leased 29% of the space at the Location from Generation. Boot Barn pays \$11,250 each month or 26% of the monthly obligation that Circuit City paid to Generation for the Location. Boot Barn commenced paying rent in August of 2011.

8. In February of 2012, a third tenant (“Café Rio”) leased 14% of the space at the Location. Starting in October of 2012, Café Rio will be paying \$9,178 each month or 21% of the monthly obligations that were formerly paid by Circuit City for the Location.

9. At the time of the filing of this pleading 900 square feet of the Location remain unrented.

10. Since the Rejection, in addition to lost and reduced rent payments, Generation paid \$131,118.81 in commission to real estate agencies, \$247,368.80 in real estate taxes (2008-2011), \$839,136.35 in tenant remodel expenses, \$61,511.81 in utilities (March 2009-May 2012), \$21,021.72 for building insurance, and \$12,254.11 for pavement repairs. These expenses total \$1,312,411.60.

11. For the reasons stated herein, Generation has been unable to mitigate its damages in any meaningful way, such that its Claim should be allowed in full, as filed.

12. The party with authority to discuss mitigation issues and the facts stated in this Response is the following:

Nadine Holter
Generation H One and Two Limited Partnership
3509 South Mason Street
Fort Collins, Colorado 80525
970-226-1900

WHEREFORE, Generation H One and Two Limited Partnership requests that the Court deny the Liquidating Trust's Objection to Claim No. 12537 and that such claim be allowed finally by Court order in the amount of \$858,981.93.

Dated: June 20, 2012

CHRISTIAN & BARTON, LLP

/s/ Jennifer M. McLemore

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CERTIFICATE OF SERVICE

I, Jennifer M. McLemore, hereby certify that on the 20th day of June 2012, a true and correct copy of the foregoing Response of Generation H One and Two Limited Partnership to Liquidating Trust's Fortieth Omnibus Objection to Landlord Claims (Reduction of Certain Invalid Claims-Mitigation) (Claim No. 12537) has been served electronically using the ECF system on all registered users of the CM/ECF system who have filed notices of appearance in this matter and emailed separately to the following:

Jeffrey N. Pomerantz, Esquire
Andrew W. Caine, Esquire
Lynn L. Tavenner, Esquire
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/s/ Jennifer M. McLemore
Jennifer M. McLemore